

REMARKS

Claims 6-11, 13, and 14 are pending in the application. Claims 1-5 have been canceled without prejudice to Applicant's right to prosecute these claims in a timely filed continuation application. Claim 12 has been canceled.

In view of the following remarks, reconsideration and withdrawal of the rejections to the application in the Office Action is respectfully requested.

I. Cancellation of Non-elected Claims

The Office Action noted that the application still contains claims 1-5, which are drawn to a non-elected invention and a complete reply to the final Office Action must include cancellation of these non-elected claims. Applicant has now canceled Claims 1-5 in compliance with the recommendations in the Office Action.

II. Rejection of Claims Under 35 U.S.C. 103(a)

In the Office Action, Claims 6-11, 13, and 14 were rejected under 35 U.S.C. §103(a) as being unpatentable over an article from The Journal of Pharmaceutical Sciences, Vol. 89, No. 1 (2000), authored by Guilherme L. Indig and five other co-authors (hereinafter, Indig 2000) or over an article from recent Research and Developments in Pure and Applied Chemistry, Vol. 3 (1999), authored by Guilherme L. Indig (hereinafter, Indig 1999) for the reasons set forth in the previous Office Action. Applicant respectfully traverses.

Applicant respectfully directs the Examiner's attention to the Declaration of Guilherme L. Indig which is submitted under 37 C.F.R. §1.132. Applicant hereby requests that this declaration be entered in the file of this application and be made of record.

Guilherme L. Indig, Gregory F. Anderson, Michael G. Nichols, Jeremy A. Bartlett, William S. Mellon, and Fritz Sieber are co-authors of the article entitled, "Effect of Molecular Structure on the Performance of Triarylmethane Dyes as Therapeutic Agents for Photochemical Purging of Autologous Bone Marrow Grafts from Residual Tumor Cells," published by The Journal of Pharmaceutical Sciences, Vol. 89, No. 1,

January 2000 (the Indig 2000 reference). This article, which includes Gregory F. Anderson, Michael G. Nichols, Jeremy A. Bartlett, William S. Mellon, and Fritz Sieber as authors, in addition to the inventor of the present application, occurred prior to, but not more than one year before the filing date of the present application. However, the enclosed declaration of Guilherme L. Indig confirms that he is the sole inventor of the subject matter claimed in the present application. For this reason, the cited article was not prior art that can be asserted against the claims of this application.

As noted by the Examiner in a previous Office Action, mailed December 24, 2002, the remaining cited reference, the Indig 1999 reference, fails to teach any time limits for the exposure of the photochemotherapeutic agent to light. In a telephone conversation on December 9, 2002, the Examiner recommended amending Claim 6 to include the limitation that the mixture of cancerous and non-cancerous cells containing the photochemotherapeutic compound is exposed to light for a period of up to 90 minutes, in order to overcome a rejection based on the Indig 1999 reference. Claim 6 was amended in compliance with the Examiner's recommendation in the previous response and amendments. Therefore, Applicant believes that Claim 6, as previously amended, is in condition for allowance and respectfully requests that this rejection be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicant respectfully submits that all of the claims remaining in the application are in condition for allowance and favorable action thereon is respectfully solicited.

Respectfully submitted,

Date: September 26, 2003

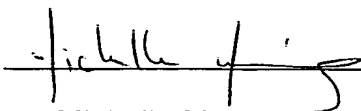
FOLEY & LARDNER

Customer No. 23524

PATENT TRADEMARK OFFICE

Telephone: (608) 258-4305

Facsimile: (608) 258-4258

By 

Michelle Manning
Attorney for Applicant
Registration No. 50,592